S.B. Civil Writ Petition NO.6600/2003
Mukesh Bhat
vs
Presiding Officer, MACT, Pali & Ors.

DATE OF ORDER : - 11.4.2005

HON'BLE MR. PRAKASH TATIA,J.

Mr.KK Shah, for the petitioner.
Mr.BS Bhati, for the respondents.

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Heard learned counsel for the parties finally.

The controversy is short one only. The petitioner's claim petition seeking compensation for loss, which petitioner suffered due to the accident caused by the motor vehicle, was dismissed by the Motor Accident Claims Tribunal, Pali vide order dated 5th May, 1988 as nobody appeared when the case was called before the tribunal. It will be relevant to mention here that the petitioner was minor and claim petition was submitted on behalf of petitioner through his legal guardian. It is alleged that at time of filing of the claim petition, the petitioner was of the age of four and half years only. He became major and after becoming major, after one and half years, he moved application for restoration of the claim petition. The claim petition was dismissed by the Motor Accident Claims Tribunal, Pali vide order dated 18th July, 2003 on the ground that the petitioner has levelled allegations against the advocate, which prima facie appears to be not correct one

and the petitioner's case that the tribunal should have appointed legal guardian, cannot be sustained because of the reason that the claim petition was filed originally by the legal guardian of the petitioner himself. The tribunal also observed that the petitioner submitted the restoration petition after inordinate delay even after attaining the majority.

According to learned counsel for the petitioner, the tribunal should have taken a liberal view in condoning the delay in such a matter where the claim petition was filed by the minor through guardian and the guardian did not appear on the date when the case was called. It is also submitted that the petitioner neither could have specific knowledge about all the facts what transpired between the petitioner's legal guardian and the advocate, but fact is that the claim petition was dismissed because of the non-appearance of the guardian of the petitioner and it was not the fault of the petitioner himself.

Learned counsel for the respondent vehemently submitted that the petitioner submitted application for restoration of the claim petition after inordinate delay and even submitted the restoration petition after delay after becoming major. It is also submitted that no case of condonation of delay by any stretch of imagination could be made out from the facts narrated by the petitioner in the application.

It is also submitted that in a case where the claim petition was filed through guardian, it was not the duty of the court to appoint the legal guardian.

Without going into all disputed questions of facts, the fact is that the Motor Vehicle Act has been amended in the year 1988 and in view of the above, the claimant can file the claim petition by any time and the rigor of limitation has been removed. The above proposition has been made applicable retrospectively. The Rule 4 of Order 9 provides that the plaintiff (claimant) may bring fresh suit or court may restore the suit if the application is submitted by the plaintiff (claimant). However, for submitting the application for restoration, there is period of limitation, but at the same time, the Rule 4 clearly provides that where the suit is dismissed under Rules 2 or 3, as has been done in this case, the plaintiff (claimant) may subject to law of limitation, bring a fresh suit (claim) or he may apply for an order of setting aside the dismissal.

In view of the change in law as done by the amendment of 1988 even after dismissal of the claim petition, the petitioner got the right to file fresh claim as there is no period of limitation for filing the claim petition under the Act of 1988 and, therefore, the bar as created by Rule 4 for filing the fresh claim petition stand removed. However, if the fresh claim petition as it is can be filed by the claimant without

disclosing any sufficient cause for maintaining or filing the fresh claim petition then there appears to be no reason for denying the restoration and directing the petitioner to file a fresh claim petition having same pleadings and direct the petitioner (claimant) to serve the notices to all those parties, who have put in appearance before the court. There appears to be no reason for adopting such procedure, which will only lead to delay in disposal of the claims filed under the Motor Vehicles Act and this will result into frustrating the aims and objects for removing the bar of limitation of filing the claim petition and it will also be against the principle that as far as multiplicity of proceedings should be avoided.

In view of the above, the writ petition of the petitioner deserves to be allowed only on the grounds mentioned above, hence allowed. The order of the Motor Accident Claims Tribunal, Pali dated 18th July, 2003 is set aside and the claim petition no.51/84 is restored to is original number. The petitioner and the respondent no.2 are directed to appear before the Motor Accident Claims Tribunal, Pali on 9.5.205.

(Prakash Tatia), J.

c.p.goyal/-